

REMARKS

Claims 21-43 are pending in this Application. Though no claims have been amended with this Response, Applicant respectfully provides the above claim listing. The Examiner's rejections will now be respectfully addressed in turn.

Rejections under 35 U.S.C. §103(a)

Claims 21-23, 25-27, and 30-33 have been rejected under 35 U.S.C. §103(a) as being obvious NPL to Murray ("Murray" hereinafter) in view of NPL to Allen ("Allen" hereinafter). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

In addition, if proposed modification would render a prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) and MPEP 2143.01 V.

As is set forth by the Examiner in the Office Action of July 1, 2008, Murray teaches a combining of a radioconjugate of C595 with a beta emitter to treat bladder cancer, but does not teach an antibody conjugated to an alpha emitting radionuclide, as is required by Applicant's claims. Allen teaches the use of alpha emitters with monoclonal antibodies, and the Examiner alleges that this teaching in Allen, as combined with Murray, remedies the deficiencies of Murray via an alleged combined teaching of an alpha emitting radionuclide bound to C595.

However, Applicant respectfully points out that such a combination of Allen and Murray would render Murray unsatisfactory for its intended purpose of treating **bladder cancer**. This is because, as is evidenced by and stated at page 9 line 21 of Applicant's PCT Application, alpha emitting radionuclides bound to C595 antibodies have been found to be **ineffective in treating bladder cancer**. Thus, if one were to replace the beta emitters of Murray with the alpha emitters of Allen, as would be necessitated by the Examiners proposed combination/modification of the references, the treatment taught in Murray **would be ineffective with regards to bladder cancer**. As the stated and intended purpose of Murray is to treat bladder cancer (see the title of Murray), Murray would thus be rendered unsatisfactory for its intended purpose. Therefore, a combination of Murray and Allen is improper because there is no suggestion or motivation to make the proposed modification (*In re Gordon*, MPEP 2143.01 V).

As there is no motivation to combine Murray with Allen, Applicant respectfully submits that *prima facie* obviousness does not exist regarding claims 21-23, 25-27, and 30-33 with respect to the proposed combination of Murray and Allen. Thus, one of ordinary skill in the art would clearly not have a reasonable likelihood of success in forming the claimed invention by modifying or combining, or be able to teach every element of claims 21-23, 25-27, and 30-33 by modifying or combining. Thus, here again, *prima facie* obviousness does not exist. *Id.*

Conclusion

Applicant believes that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for any extension of time under 37 C.F.R. 1.136(a) or 1.136(b) that may be necessary for entry and consideration of the present Reply.

If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact applicant's attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application.

Respectfully submitted,

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